

From the INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

DORSEY & WHITNEY LLP
Attn. Abelev, Gary
250 Park Avenue
New York NY 10177
ETATS-UNIS D'AMERIQUE

NOTIFICATION OF TRANSMITTAL OF
THE INTERNATIONAL SEARCH REPORT AND
THE WRITTEN OPINION OF THE INTERNATIONAL
SEARCHING AUTHORITY, OR THE DECLARATION

Patent Mail Received

SEP 02 2008

(PCT Rule 44.1)

Date of mailing
(day/month/year)

27/08/2008

Applicant's or agent's file reference

189221/PCT

FOR FURTHER ACTION

See paragraphs 1 and 4 below

International application No.

PCT/US2008/060600

International filing date
(day/month/year)

17/04/2008

Applicant

THE GENERAL HOSPITAL CORPORATION

1. ☒ The applicant is hereby notified that the international search report and the written opinion of the International Searching Authority have been established and are transmitted herewith.

Filing of amendments and statement under Article 19:

The applicant is entitled, if he so wishes, to amend the claims of the International Application (see Rule 46):

When? The time limit for filing such amendments is normally two months from the date of transmittal of the International Search Report.

Where? Directly to the International Bureau of WIPO, 34 chemin des Colombettes
1211 Geneva 20, Switzerland, Facsimile No.: (41-22) 338.82.70

For more detailed instructions, see the notes on the accompanying sheet.

2. ☐ The applicant is hereby notified that no international search report will be established and that the declaration under Article 17(2)(a) to that effect and the written opinion of the International Searching Authority are transmitted herewith.
3. ☐ With regard to the protest against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:
- ☐ the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.
- ☐ no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.

4. Reminders

Shortly after the expiration of **18 months** from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90bis.1 and 90bis.3, respectively, before the completion of the technical preparations for international publication.

The applicant may submit comments on an informal basis on the written opinion of the International Searching Authority to the International Bureau. The International Bureau will send a copy of such comments to all designated Offices unless an international preliminary examination report has been or is to be established. These comments would also be made available to the public but not before the expiration of 30 months from the priority date.

Within **19 months** from the priority date, but only in respect of some designated Offices, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase **until 30 months** from the priority date (in some Offices even later); otherwise, the applicant must, **within 20 months** from the priority date, perform the prescribed acts for entry into the national phase before those designated Offices.

In respect of other designated Offices, the time limit of **30 months** (or later) will apply even if no demand is filed within 19 months.

See the Annex to Form PCT/IB/301 and, for details about the applicable time limits, Office by Office, see the *PCT Applicant's Guide*, Volume II, National Chapters and the WIPO Internet site.

DOCKETED

Name and mailing address of the International Searching Authority



European Patent Office, P.B. 5818 Patentlaan 2
NL-2280 HV Rijswijk
Tel. (+31-70) 340-2040, Tx. 31 651 epo nl,
Fax: (+31-70) 340-3016

Authorized officer

Lars-Oliver Römich

NOTES TO FORM PCT/ISA/220

These Notes are intended to give the basic instructions concerning the filing of amendments under article 19. The Notes are based on the requirements of the Patent Cooperation Treaty, the Regulations and the Administrative Instructions under that Treaty. In case of discrepancy between these Notes and those requirements, the latter are applicable. For more detailed information, see also the *PCT Applicant's Guide*, a publication of WIPO.

In these Notes, "Article", "Rule", and "Section" refer to the provisions of the PCT, the PCT Regulations and the PCT Administrative Instructions, respectively.

INSTRUCTIONS CONCERNING AMENDMENTS UNDER ARTICLE 19

The applicant has, after having received the international search report and the written opinion of the International Searching Authority, one opportunity to amend the claims of the international application. It should however be emphasized that, since all parts of the international application (claims, description and drawings) may be amended during the international preliminary examination procedure, there is usually no need to file amendments of the claims under Article 19 except where, e.g. the applicant wants the latter to be published for the purposes of provisional protection or has another reason for amending the claims before international publication. Furthermore, it should be emphasized that provisional protection is available in some States only (see *PCT Applicant's Guide*, Volume I/A, Annexes B1 and B2).

The attention of the applicant is drawn to the fact that amendments to the claims under Article 19 are not allowed where the International Searching Authority has declared, under Article 17(2), that no international search report would be established (see *PCT Applicant's Guide*, Volume I/A, paragraph 296).

What parts of the international application may be amended?

Under Article 19, only the claims may be amended.

During the international phase, the claims may also be amended (or further amended) under Article 34 before the International Preliminary Examining Authority. The description and drawings may only be amended under Article 34 before the International Examining Authority.

Upon entry into the national phase, all parts of the international application may be amended under Article 28 or, where applicable, Article 41.

When?

Within 2 months from the date of transmittal of the international search report or 16 months from the priority date, whichever time limit expires later. It should be noted, however, that the amendments will be considered as having been received on time if they are received by the International Bureau after the expiration of the applicable time limit but before the completion of the technical preparations for international publication (Rule 46.1).

Where not to file the amendments?

The amendments may only be filed with the International Bureau and not with the receiving Office or the International Searching Authority (Rule 46.2).

Where a demand for international preliminary examination has been/is filed, see below.

How?

Either by cancelling one or more entire claims, by adding one or more new claims or by amending the text of one or more of the claims as filed.

A replacement sheet must be submitted for each sheet of the claims which, on account of an amendment or amendments, differs from the sheet originally filed.

All the claims appearing on a replacement sheet must be numbered in Arabic numerals. Where a claim is cancelled, no renumbering of the other claims is required. In all cases where claims are renumbered, they must be renumbered consecutively (Section 205(b)).

The amendments must be made in the language in which the international application is to be published.

What documents must/may accompany the amendments?

Letter (Section 205(b)):

The amendments must be submitted with a letter.

The letter will not be published with the international application and the amended claims. It should not be confused with the "Statement under Article 19(1)" (see below, under "Statement under Article 19(1)").

The letter must be in English or French, at the choice of the applicant. However, if the language of the international application is English, the letter must be in English; if the language of the international application is French, the letter must be in French.

PCT

INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference 189221/PCT	FOR FURTHER ACTION see Form PCT/ISA/220 as well as, where applicable, item 5 below.	
International application No. PCT/US2008/060600	International filing date (day/month/year) 17/04/2008	(Earliest) Priority Date (day/month/year) 17/04/2007
Applicant THE GENERAL HOSPITAL CORPORATION		

This international search report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This international search report consists of a total of 6 sheets.

☒ It is also accompanied by a copy of each prior art document cited in this report.

1. Basis of the report

a. With regard to the **language**, the international search was carried out on the basis of:

- ☒ the international application in the language in which it was filed
☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b))

b. ☐ This international search report has been established taking into account the **rectification of an obvious mistake** authorized by or notified to this Authority under Rule 91 (Rule 43.6bis(a)).

c. ☐ With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, see Box No. I.

2. ☒ **Certain claims were found unsearchable** (See Box No. II)

3. ☐ **Unity of invention is lacking** (see Box No. III)

4. With regard to the **title**,

- ☒ the text is approved as submitted by the applicant
☐ the text has been established by this Authority to read as follows:

5. With regard to the **abstract**,

- ☐ the text is approved as submitted by the applicant
☒ the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box No. IV. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority

6. With regard to the **drawings**,

a. the figure of the **drawings** to be published with the abstract is Figure No. 1

- ☒ as suggested by the applicant
☐ as selected by this Authority, because the applicant failed to suggest a figure
☐ as selected by this Authority, because this figure better characterizes the invention

b. ☐ none of the figures is to be published with the abstract

INTERNATIONAL SEARCH REPORT

international application No.

PCT/US2008/060600

Box No. IV Text of the abstract (Continuation of item 5 of the first sheet)

An apparatus and method for providing imaging information associated with at least one portion of a sample, such as an ear. For example, at least two first different wavelengths of at least one first electro-magnetic radiation within a first wavelength range may be provided on the portion of the sample so as to determine at least one first transverse location of the portion. At least two second different wavelengths of at least one second electro-magnetic radiation may also be provided within a second wavelength range provided on the portion so as to determine at least one second transverse location of the portion. It is possible to obtain a relative phase between at least one third electro-magnetic radiation electro-magnetic radiation being returned from the sample and at least one fourth electro-magnetic radiation returned from a reference to determine a motion of the portion or of particles within or on the portion, whereas the motion is effectuated by at least one of a sound wave. Further, the imaging information of the portion can be provided based on the first transverse location, the second transverse location and the motion.

A. CLASSIFICATION OF SUBJECT MATTER
INV. A61B1/227 A61B5/00

According to International Patent Classification (IPC) or to both national classification and IPC

B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

A61B

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practical, search terms used)

EPO-Internal, BIOSIS, COMPENDEX, WPI Data

C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category*	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
X	<p>DATABASE COMPENDEX [Online] ENGINEERING INFORMATION, INC., NEW YORK, NY, US; 5 March 2007 (2007-03-05), YELIN DVIR ET AL: "Spectral-domain spectrally-encoded endoscopy" XP002492321 Database accession no. E20071110483178 See: "I.Introduction" page 2432; "3.Result", in particular page 2441, last paragraph; figures 1 and 10. & OPT. EXPRESS; OPTICS EXPRESS MAR 5 2007, vol. 15, no. 5, 5 March 2007 (2007-03-05), pages 2432-2444,</p> <p style="text-align: center;">----- -/--</p>	1-11

☒ Further documents are listed in the continuation of Box C.

☒ See patent family annex.

* Special categories of cited documents:

- 'A' document defining the general state of the art which is not considered to be of particular relevance
- 'E' earlier document but published on or after the international filing date
- 'L' document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)
- 'O' document referring to an oral disclosure, use, exhibition or other means
- 'P' document published prior to the international filing date but later than the priority date claimed

- 'T' later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention
- 'X' document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone
- 'Y' document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art.
- '&' document member of the same patent family

Date of the actual completion of the international search

15 August 2008

Date of mailing of the international search report

27/08/2008

Name and mailing address of the ISA/

European Patent Office, P.B. 5818 Patentlaan 2
NL - 2280 HV Rijswijk
Tel. (+31-70) 340-2040, Tx. 31 651 epo nl,
Fax: (+31-70) 340-3016

Authorized officer

Dhervé, Gwenaëlle

C(Continuation). DOCUMENTS CONSIDERED TO BE RELEVANT

Category*	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
X	WO 2006/130797 A (GEN HOSPITAL CORP [US]; BOUMA BRETT EUGENE [US]; TEARNEY GUILLERMO J [] 7 December 2006 (2006-12-07) abstract ✓	1-11
X	WO 02/38040 A (GEN HOSPITAL CORP [US]; TEARNEY GUILLERMO J [US]; BOUMA BRETT EUGENE [] 16 May 2002 (2002-05-16) page 7, line 5 - page 8, line 17; figure 1 page 16, line 16 - page 21, line 11 ✓	1-11
X	DATABASE BIOSIS [Online] BIOSCIENCES INFORMATION SERVICE, PHILADELPHIA, PA, US; October 2006 (2006-10), YELIN D ET AL: "Three-dimensional miniature endoscopy" XP002492322 Database accession no: PREV200700043625 the whole document & NATURE (LONDON), vol. 443, no. 7113, October 2006 (2006-10), page 765, ISSN: 0028-0836	1-11
A	WO 79/00841 A (NAT RES DEV [GB]; PETTIGREW A [AU]; ANSON M [GB]; CHUNG S [GB]) 18 October 1979 (1979-10-18) abstract	1-11
A	US 4 834 111 A (KHANNA S M [US] ET AL) 30 May 1989 (1989-05-30) column 1, line 1 - column 2, line 51	1-11

INTERNATIONAL SEARCH REPORT

international application No.
PCT/US2008/060600

Box No. II Observations where certain claims were found unsearchable (Continuation of item 2 of first sheet)

This international search report has not been established in respect of certain claims under Article 17(2)(a) for the following reasons:

1. ☒ Claims Nos.: 12-21
because they relate to subject matter not required to be searched by this Authority, namely:
Rule 39.1(iv) PCT - Method for treatment of the human or animal body by surgery
2. ☐ Claims Nos.:
because they relate to parts of the international application that do not comply with the prescribed requirements to such an extent that no meaningful international search can be carried out, specifically:
3. ☐ Claims Nos.:
because they are dependent claims and are not drafted in accordance with the second and third sentences of Rule 6.4(a).

Box No. III Observations where unity of invention is lacking (Continuation of item 3 of first sheet)

This International Searching Authority found multiple inventions in this international application, as follows:

1. ☐ As all required additional search fees were timely paid by the applicant, this international search report covers allsearchable claims.
2. ☐ As all searchable claims could be searched without effort justifying an additional fees, this Authority did not invite payment of additional fees.
3. ☐ As only some of the required additional search fees were timely paid by the applicant, this international search report covers only those claims for which fees were paid, specifically claims Nos.:
4. ☐ No required additional search fees were timely paid by the applicant. Consequently, this international search report is restricted to the invention first mentioned in the claims; it is covered by claims Nos.:

Remark on Protest

- ☐ The additional search fees were accompanied by the applicant's protest and, where applicable, the payment of a protest fee.
- ☐ The additional search fees were accompanied by the applicant's protest but the applicable protest fee was not paid within the time limit specified in the invitation.
- ☐ No protest accompanied the payment of additional search fees.

Patent document cited in search report		Publication date	Patent family member(s)	Publication date
WO 2006130797	A	07-12-2006	EP 1887926 A2	20-02-2008
			US 2006270929 A1	30-11-2006
WO 0238040	A	16-05-2002	AU 3119802 A	21-05-2002
			EP 1343411 A2	17-09-2003
			US 2008013960 A1	17-01-2008
WO 7900841	A	18-10-1979	DE 2964775 D1	24-03-1983
			EP 0014705 A1	03-09-1980
			GB 2047894 A	03-12-1980
			US 4339954 A	20-07-1982
US 4834111	A	30-05-1989	NONE	

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/US2008/060600

International filing date (day/month/year)
17.04.2008

Priority date (day/month/year)
17.04.2007

International Patent Classification (IPC) or both national classification and IPC
INV. A61B1/227 A61B5/00

Applicant
THE GENERAL HOSPITAL CORPORATION

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☐ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office - P.B. 5818 Patentlaan 2
NL-2280 HV Rijswijk - Pays Bas
Tel. +31 70 340 - 2040 Tx: 31 651 epo nl
Fax: +31 70 340 - 3016

Date of completion of
this opinion

See form
PCT/ISA/210

Authorized Officer

Dhervé, Gwenaëlle

Telephone No. +31 70 340-2380



**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2008/060600

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of:
 - ☒ the international application in the language in which it was filed
 - ☐ a translation of the international application into , which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1 (b)).
2. ☐ This opinion has been established taking into account the **rectification of an obvious mistake** authorized by or notified to this Authority under Rule 91 (Rule 43bis.1(a))
3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ on paper
 - ☐ in electronic form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in electronic form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
4. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
5. Additional comments:

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of

- ☒ the entire international application
- ☐ claims Nos.

because:

- ☒ the said international application, or the said claims Nos. 12-21 relate to the following subject matter which does not require an international search (*specify*):

see separate sheet

- ☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 1-21 are so unclear that no meaningful opinion could be formed (*specify*):

see separate sheet

- ☒ the claims, or said claims Nos. 1-21 are so inadequately supported by the description that no meaningful opinion could be formed (*specify*):

see separate sheet

- ☒ no international search report has been established for the whole application or for said claims Nos. ____

- ☐ a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:

- ☐ furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.

- ☐ furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.

- ☐ pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rules 13ter.1(a) or (b).

- ☐ a meaningful opinion could not be formed without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-bis of the Administrative Instructions, and such tables were not available to the International Searching Authority in a form and manner acceptable to it.

- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in electronic form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

- ☐ See Supplemental Box for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2008/060600

Box No. VII. Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

III.1. No meaningful opinion can be formed with regard to novelty, inventive step and industrial applicability of **claims 1-11** (Article 34(4)(a)(ii) PCT/Article 35(3)(a) PCT) because of lacks of clarity (Article 6 PCT) and insufficient disclosure (Article 5 PCT) as explained below.

First of all, the independent claim 1 refers to arrangements, at least one arrangement being configured to provide at least one first and one second EM radiation so as to determine at least one first and one second location of a portion of a sample, at least another arrangement configured to obtain a relative phase between at least one third and one fourth radiation to determine a motion, and at least one third arrangement configured to provide imaging information based on said first transverse location, said second transverse location and said motion.

However, the description does not describe (emphasis added) such a combination of features. At the most, it is made reference in the description to the use of a SEE probe in the system but without indication with respect the technical features which are needed for the system to provide imaging information as claimed in claim 1, in particular information relating to the motion. Moreover, the apparatus shown on figure 1 of the present application (see also paragraphs [0016] and [0017]) and identified as "an exemplary embodiment of an apparatus for measuring motion with SEE according to the present invention", is not disclosed as comprising more or other features than those of the three-dimensional spectrally encoded imaging apparatus disclosed in the applicant's prior application WO-A-2006/130797.

Hence, the description does not disclose the claimed invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art as required by Article 5 PCT (see also the PCT Guidelines, 4.02, 4.10 and 4.13).

Furthermore, the wording of the independent claim 1, as such, is rendered unclear because of the repetitive use of undefined/broad terms ("at least one...", "first/second/third arrangements"), the broad meaning of those terms being not commensurate with the

limited description of the invention.

The vague and imprecise statement in the description on page 4, paragraph [0015] and on page 6, paragraph [0020], especially the mention to "the spirit of the invention", and the fact that the subject-matter of the independent claim 1 is presented in the description as "exemplary embodiment of the present invention" (see paragraphs [0005] and [0006]), implies that the subject-matter for which protection is sought may be different to that defined by the claims, thereby resulting in a further lack of clarity of the claims (see also the PCT Guidelines, 5.29 and 5.30).

The dependent claims 2, 6, 7 and 8 further define features of a sound wave which do not limit the scope the invention since the apparatus defined in claim 1 does not comprise the device for providing a sound wave.

Finally, it is not clear in which extent the anatomical references defined in the dependent claims 3, 4 and 10 should imply structural limitations to the claimed apparatus as such. The aforementioned claims therefore lack clarity and are not supported by the description contrary to the requirements of Article 6 PCT.

III.2. No examination is carried out on **claims 12-21** because they relate to a "method for providing imaging information" which involves a treatment of the living body by surgery. Indeed, as described in the description (see, in particular, paragraph [0017]), the method implies the step of inserted a SEE probe through an incision in the tympanic membrane. Such an invasive method is covered by the provision of Rule 67(1)(iv) PCT (see also the PCT Guidelines, 9.08-9.10 and Rule 43bis.1(b) PCT)

The attention of the applicant's is further drawn to the fact that those claims also infringe the requirements of Articles 5 and 6 PCT for reasons similar to those given above with respect to the apparatus-claims.

Re Item VII

Certain defects in the international application

VII.1. Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents WO-A-2006/130797 and XP002492321 (YELIN DVIR ET AL: "Spectral-domain spectrally-encoded endoscopy"; 5 March 2007) is not mentioned in the

description, nor are these documents identified therein.

VII.2. The mention "incorporated herein by reference" on page 6, paragraph [0020] should be deleted. If the referred to documents are useful for understanding the claimed invention, a brief summary of their content should be included in the description (see the PCT Guidelines, 4.26).

Possible steps after receipt of the international search report (ISR) and written opinion of the International Searching Authority (WO-ISA)

General information

For all international applications filed on or after 01/01/2004 the competent ISA will establish an ISR. It is accompanied by the WO-ISA. Unlike the former written opinion of the IPEA (Rule 66.2 PCT), the WO-ISA is not meant to be responded to, but to be taken into consideration for further procedural steps. This document explains about the possibilities.

Amending claims under Art. 19 PCT

Within 2 months after the date of mailing of the ISR and the WO-ISA the applicant may file amended claims under Art. 19 PCT directly with the International Bureau of WIPO. The PCT reform of 2004 did not change this procedure. For further information please see Rule 46 PCT as well as form PCT/ISA/220 and the corresponding Notes to form PCT/ISA/220.

Filing a demand for international preliminary examination

In principle, the WO-ISA will be considered as the written opinion of the IPEA. This should, in many cases, make it unnecessary to file a demand for international preliminary examination. If the applicant nevertheless wishes to file a demand this must be done before expiry of 3 months after the date of mailing of the ISR/ WO-ISA or 22 months after priority date, whichever expires later (Rule 54bis PCT). Amendments under Art. 34 PCT can be filed with the IPEA as before, normally at the same time as filing the demand (Rule 66.1 (b) PCT).

If a demand for international preliminary examination is filed and no comments/amendments have been received the WO-ISA will be transformed by the IPEA into an IPRP (International Preliminary Report on Patentability) which would merely reflect the content of the WO-ISA. The demand can still be withdrawn (Art. 37 PCT).

Filing informal comments

After receipt of the ISR/WO-ISA the applicant may file informal comments on the WO-ISA directly with the International Bureau of WIPO. These will be communicated to the designated Offices together with the IPRP (International Preliminary Report on Patentability) at 30 months from the priority date. Please also refer to the next box.

End of the international phase

At the end of the international phase the International Bureau of WIPO will transform the WO-ISA or, if a demand was filed, the written opinion of the IPEA into the IPRP, which will then be transmitted together with possible informal comments to the designated Offices. The IPRP replaces the former IPER (international preliminary examination report).

Relevant PCT Rules and more information

Rule 43 PCT, Rule 43bis PCT, Rule 44 PCT, Rule 44bis PCT, PCT Newsletter 12/2003, OJ 11/2003, OJ 12/2003

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Applicant

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